IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5614 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SOHANSING KESARSING RAJPUT

Versus

COMMISSIONER OF POLICE

Appearance:

MRS PC FERNANDEZ for Petitioner

MR KT DAVE AGP for Respondent No. 1, 2 & 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 19/01/2000

ORAL JUDGEMENT

Leave to amend granted to the petitioner to amend the petition as per the draft amendment and to correct the name of respondent No.3 as the Superintendent, Jamnagar Jail instead of the Superintendent, Sabarmati Jail, Ahmedabad. The

petitioner to carry out the amendment forthwith.

#. Heard Ms.P.C.Fernandies, learned advocate for the petitioner and Mr.K.T.Dave, learned AGP appearing for respondents No. 1, 2 & 3.

#. The detention order dated 12-3-1999 passed by respondent No.1 - The Commissioner of Police, Ahmedabad against the petitioner in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act 1985 (`PASA' for short') is challenged by way of this present petition under Article 226 of the Constitution of India.

#. That the grounds of detention served and supplied to the detenu under Section 9(1) of the PASA, a copy of which is produced at Annexure-B interalia indicates that in all two prohibition cases were registered against the petitioner at Nashabandhi police station (West Division) on 12-2-99 and 11-3-1999. That in each case, the country made liquor was seized from the possession of the petitioner / detenu. Furthermore, two witnesses on assurance of their anonymity have given statement on 11-3-1999 referring to alleged incidents dated 11-2-1999 and 22-2-1999. That in consideration of the above stated material, the respondent No.2 - the detaining authority has come to the conclusion that the petitioner / detenu is bootlegger within the meaning of Section 2(b) of PASA. That enforcement of general provisions of law being insufficient to prevent the petitioner from continuing his prejudicial activities, detention order is necessary and hence the impugned order is passed.

#. It has been submitted on behalf of the petitioner at bar that while passing the impugned order, the detaining authority has failed to consider the less drastic remedy like claiming of cancellation of bail as available under Section 437(5) of CrPC, as such, on account of non application of mind, subjective satisfaction having been vitiated, the detention order is rendered invalid.

#. That in the matter of ZUBEDABIBI RASIDKHAN PATHAN VS. STATE OF GUJARAT AND OTHERS 1995 (2) GLR 1134, the Division Bench of this Court has expressed the view that non consideration of less drastic remedy available under Section 437(5) of the CrPC claiming cancellation of bail amounts to non application of mind which vitiates the subjective satisfaction, thus rendering the detention order bad in law. That the said view has been approved and endorsed in the proceeding of Letters Patent Appeal No : 1056 of 1999 decided on 15-9-99 by this Court

(Coram : C.K.Thakker & A.L.Dave, JJ.).

#. In the instant case, on scrutiny of papers, in the last but one para of grounds for detention, it is clear that the petitioner was in police custody in connection with the offence registered vide C.R.No : 121 of 1999 and he is released on bail in respect to C.R.No : 69 of 1999. It is further more observed that in due course of time, the detenu may be produced before the Court and he may apply for bail and having got himself released on bail, is likely to continue is anti social activities. That the said observation suggests that the impugned order is passed mere on apprehension rather than the facts and that the detaining authority has not considered the aspect of less drastic remedy like claiming of cancellation of bail as available under Section 437(5) of CrPC and thereby, on account of the said non application of mind, subjective satisfaction reached by the detaining authority is vitiated and has rendered the impugned order invalid.

#. As the petition succeeds on the aforesaid ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

#. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 12-3-99 passed by respondent No. 1 - The Commissioner of Police, Ahmedabad against the petitioner is hereby quashed and set aside. The petitioner - Sohansinh Kesarsinh Rajput is ordered to be set at liberty forthwith, if not required in any other case. Rule to that extent is made absolute.

Date : 19-1-2000 [A.K.Trivedi, J.]

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